

CONTRACT FOR: PROFESSIONAL SERVICES FOR DRAINAGE SYSTEM REROUTING IN THE VICINITY OF UNIVERSITY DRIVE AND CHAPEL HILL BOULEVARD

This contract is made and entered into as of the 27<sup>th</sup> day of September, 2006, by the City of Durham ("City") and HDR Engineering, Inc. of the Carolinas ("Contractor"), a corporation organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose. The drainage system located on private property at 2514 University Drive begins as a 72" CMP in the back of the property, runs east under the parking lot, transitions to a large box configuration under one of the buildings on the property, splits into a smaller box and a 48" CMP at the front of the building, and flows into twin 48" CMPs under University Drive. Failure of the system at the front of the property has caused a large void under the parking lot, sign and front portion of the building. The owner has requested City assistance in repairing the system, and the City is considering offering such assistance, since the property qualifies under City ordinance for assistance.

Sec. 2. Basic Services and Scope to be Performed. The Contractor shall provide professional services for the analysis, design, cost estimate, and construction ready plans and specifications for rerouting the drainage system at 2514 University Drive. The plans and specifications must be signed and sealed by a registered professional engineer licensed in the State of North Carolina. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. After written authorization to proceed, the Contractor shall perform the following professional services:

(a) Task 100 – Data Collection

1. Contractor will perform a site visit and meeting with the City of Durham's Project Manager to observe current conditions. The site evaluation will include the following:
  - a. Consult with the City to clarify requirements for the work and to review available data.
  - b. Obtain GIS data from the City to aid in the drainage analysis.
  - c. Perform a reconnaissance survey of the channel to determine its active or passive state, and to identify and document existing problems. Such documentation will limit liability related to existing pre-construction issues. Evaluation of the existing culvert is not included in the scope of this task.
  - d. Gather existing data/maps of the existing easements and parcels from the City and/or property owner. Conduct limited consultation with individual property owners on design, location, and access questions.
  - e. Investigate the requirements of potential environmental permitting associated with channel impacts. Submittal of permits is not included in this scope.
  - f. Obtain information through a "potential contaminant database search" of known groundwater or underground storage tank issues on the property at 2514 University Drive.
2. Contractor will contract with a surveying subconsultant to perform a survey of the area of concern within the property and area adjacent to the property that may be affected by the improvements. The survey information will be prepared into a base map for use in developing an alignment of the proposed storm drainage system.
3. Contractor will obtain utility company contact information for use in communicating with utility companies who have lines within the Project Area. The Project Area includes the area of concern within the property of 2514 University Drive and areas adjacent to this property that may be identified on the construction drawings for the proposed design.

(b) Task 200 – Surveying Services.

1. Field surveying, and mapping services will consist of the following information:
  - a. Topographic surveys: Topographic surveys for topographic information shall include locating horizontally all planimetric features such as buildings, fences, walls, driveways, curb & gutter, sidewalks, and other improvements within these project limits. These will be mapped and dimensioned to the nearest 0.1'
  - b. Survey Research and Property ties: The surveyor will perform research necessary to determine existence of existing deeds or plats to assist in location of existing property corners. Research will also be performed or provided (by City of Durham) for an existing sanitary sewer outfall within the project limits.
  - c. Horizontal Datum: The horizontal datum will be tied to a horizontal control network consistent with the requirements for a Class A surveys (Urban survey) in North Carolina. The horizontal datum will be based on NC Grid (NAD 83) coordinate values derived from GPS observations or existing NCGS monuments.
  - d. Vertical Datum: Topographic survey information will be consistent with requirements for a Class A topographic survey (Urban and Suburban) in North Carolina. The vertical datum will be based on NAVD 88 datum derived from GPS observations or NCGS benchmarks. The vertical datum reference will be clearly indicated on the mapping. A temporary benchmark will be set on the property at 2514 University Drive and tied to the vertical datum and will be located on the mapping with description and elevation to the nearest 0.01'.
  - e. Contours: Contours with spot elevations at the following interval: 1 foot minor and 5' major. Spot elevations on paving and other hard surfaces shall be to the nearest .05 foot and on other surfaces to the nearest .10 foot.
  - f. Underground Utilities: Typically ULOCO or ONE-Call does not designate underground utilities on private property or past the Right of Way of public streets. The surveyor will provide horizontal designation and location of underground utilities for the project that are within the Project Area. The underground utilities will be marked with spray paint using electromagnetic equipment. The surveyor will show underground utilities from field information and any existing records provided. The surveyor makes no guarantee that the underground utilities shown comprise all such utilities either in service or abandoned. The surveyor shall locate the underground utilities as accurately as possible using an induced electromagnetic signal on the utility and from record information available. Underground utilities located by the surveyor using an induced electromagnetic signal are not warranted to be shown in the exact location, but should be located horizontally within a foot. The surveyor does not warrant the location of utilities from available records whose location could not be verified in the field. The surveyor shall not physically locate the underground utilities utilizing Subsurface Utility Vacuum Extraction. Therefore, the depth of the non-gravity underground utilities shall not be provided. If design criteria dictate that depth of a utility is needed, Contractor can coordinate Subsurface Utility Extraction to obtain the depth in the areas in conflict with the proposed design as an additional service. Underground utility systems located within the project will be mapped using SUE location electromagnetic equipment utilizing NCDOT level B designation procedures adopted by the NCDOT. In addition, above ground utility features including but not limited to water meters, hydrants, valves, manholes, backflow preventors, and blow off assemblies will be located. Efforts will be made to determine size, type, and location of underground utilities from mapping and records from the utility companies affected. Depth of underground utilities can be obtained from the electromagnetic locating equipment to +/- one foot. NOTE: SUE level "A" designation for utility depth

is not a part of this scope. If utility depth is required, as a result of possible design conflicts with existing utilities, Contractor will coordinate and provide such service in a supplemental agreement.

- g. Storm and Sanitary Sewer: Storm drainage and sanitary sewer systems within the project limits will be located. Storm drainage information gathered will include size of structure, pipe material and size, pipe inverts, and top of curb elevations at catch basins. Sanitary sewer information will include rim and invert elevations and pipe material and size.

- 2. Base mapping of the Project Area will be provided. Base mapping will be in imperial units set up at 1" = 50' scale or as prescribed by the design engineer using NC Map criteria, compatible with NCDOT standards. Electronic files will be provided in an AutoCAD compatible format.

(c) Task 300 – Design

- 1. Contractor will determine peak flows for design storms at the area using standard hydrology methods and GIS tools. The soil data, land use, topography, and time of concentration will be studied and calculated to derive watershed characteristics. The Natural Resources Conservation Service (NRCS), formerly known as Soil Conservation Service (SCS), method with built in hydrologic models such as HydraFlow Hydrographs will be used for peak flow calculation. The drainage area tributary to this culvert is approximately 214 acres.
- 2. The design criteria and calculated design peak flows will determine the required capacity of the system. The most effective location and maximum gradient of the storm water system will be determined by site data, such as utility constraints, existing structures, and/or existing easements locations. These site design elements will dictate the hydraulic characteristics of the system such as pipe size, slope, length, and material.
- 3. The headwalls on both ends of the culvert system will be standard designs in accordance with NC DOT design standards.
- 4. The proposed design elements will be incorporated into the model simulation to obtain a hydraulically feasible design. The storm water system model will be evaluated to determine the flow regime in the system and the requirements for stream protection at the outlet end of the culvert.
- 5. Contractor will meet with the utility companies whose utilities are in the Project Area. The purpose of this meeting will be to collect additional information on the location and depth of their utilities, and to discuss possible conflicts and opportunities for relocation and/or protection involved in relocating the culvert. Design of any utility relocation associated with the culvert relocation is not included.
- 6. During the design process, if it appears underground verification of adjacent utilities is necessary; Contractor will assist the City to obtain a Subsurface Utility Engineering (SUE) firm to provide this service.
- 7. The proposed design will be presented to the City for review and approval. Limits of temporary construction and permanent drainage easements will be identified and provided to the City for acquisition. No more than two alternative layouts will be identified for consideration.
- 8. Contractor will meet with NCDOT representatives to obtain input on the design as it affects work within the road right-of-way.
- 9. Contractor may make minor adjustments to the alignment at this time based on input by the utility companies, the City review, and/or DOT review.
- 10. Contractor will prepare a preliminary estimate of construction cost.

(d) Task 400 - Preparation of Construction Documents

- 1. The conceptual design approved by City shall be transferred into construction drawings and specifications. The drawings, including erosion and sediment control plans, plan and

profile views, and construction details of the proposed improvements, will be developed to ascertain impacts/easements to properties and permitting requirements.

2. Final construction documents consisting of plans and specifications will be prepared for the City to use in bidding and construction.
3. An estimate of construction based on the final plans will be prepared.
4. Construction shall be in accordance with NCDOT specifications.
5. Contractor will utilize city standard general conditions and contracting forms, or current EJCDC documents for the preparation of the project manual as directed by the City.
6. Contractor will meet with the City Project Manager to obtain review comments of the documents, and address these comments as part of developing the final contract documents.

(e) Deliverables

The Contractor shall provide the following deliverables in connection with the tasks described above in (a) through (d):

1. Two (2) copies of all reports generated for the Work.
2. Two (2) copies of the Survey Base Map.
3. Six (6) copies of the Preliminary Design Alignments.
4. Two (2) copies of the Utility Contact Information.
5. Six (6) copies of the Pre-Final Plans and Specifications.
6. One (1) copy of the Final Plans and Specifications sealed by a licensed Professional Engineer registered in the State of North Carolina at one hundred percent (100%) completion.
7. A copy of the digital files for all final reports, maps, cost estimates, plans, and specifications.

Sec. 3. Additional Services. If authorized in writing by the City Additional Services related to the Contract will be performed by the Contractor for an additional professional fee.

Sec 4. City's Responsibilities. The City shall provide all criteria and full information as to the City's requirements for the assignment in a timely manner so as not to delay the services of the Contractor.

Sec 5. Period of Service.

- (a) The Basic Services under Section 1 of this agreement shall begin upon receipt of a written notice to proceed and shall be considered complete on the date the mylars of the construction plans, specifications, and costs are accepted by the City.
- (b) Additional Services shall be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.
- (c) If any time period within any of the Contractor's services to be completed is exceeded by more than one hundred twenty (120) days through no fault of the Contractor, all rates, measures and amounts of compensation and the time for completion of performance may be subject to equitable adjustment.
- (d) The Contractor acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this agreement in a manner consistent with that schedule, as provided below. The City understands, however, that the Contractor's performance must govern by sound professional practices. The following schedule is anticipate:
  1. Completion of the Data Collection and Surveying Services by the Contractor should occur within 30 days from the Notice to Proceed.
  2. Completion of the Design phase by the Contractor with submission of the analysis results, proposed design alternatives, and preliminary cost estimate to the City should occur within 30 days from completion of the Surveying Services.
  3. The City should complete review of the proposed design alternatives and provide comments to the Contractor within three (3) weeks from the Contractor's submission.

4. Pre-final construction documents should be submitted to the City within 30 days after the Contractor receives the City's comments on the analysis results and proposed design.
5. The City should complete review of the pre-final construction documents and provide comments to the Contractor within three (3) weeks from the Contractor's submission.
6. The Contractor should submit the final construction documents to the City for review and acceptance two (2) weeks after receipt of the City's comments on the pre-final construction document submittal.
7. The City should complete review of the final construction documents and either accept the documents or provide comments to the Contractor within one (1) week from the Contractor's submission.
8. If necessary the Contractor will make corrections to the final construction documents and provide the corrected final delivery to the City within one (1) week after receiving the City's comments.

Sec. 6. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 7. Compensation. The City shall pay the Contractor for the Work as follows:

(a) For Basic Services. The City shall pay the Contractor for all Basic Services rendered under Section 2 as follows:

1. A total Lump Sum amount of \$29,988 based on the following assumed distribution of compensation:

Task #	Phase	Cost
100	Data Collection	\$ 2,918
200	Surveying Services	\$ 9,640
300	Design	\$ 5,280
400	Construction Documents	\$12,150

2. Contractor may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
  3. The Lump Sum includes compensation for Contractor's services and services of Contractor's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and reimbursable expenses.
  4. The portion of the Lump Sum amount billed for Contractor's services will be based upon Contractor's reasonable estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.
  5. Payment is conditioned on the Work being completed in accordance to the Basic Services and Scope and Period of Service of this Contract. Except to the extent provided in an amendment agreed to in writing between the parties, the Owner shall not be obligated to pay any compensation greater than the Lump Sum.
- (b) For Additional Services. The City shall pay the Contractor for all Additional Services rendered under Section 3 on the basis agreed to in writing by the parties at the time such services are authorized.

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 8. Contractor's Billings to City. The Contractor shall invoice the City upon completion of each task as specified under Section 7 for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City such information as may be reasonably requested by the City. Within twenty (20) days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice. The City's failure to dispute a

billing does not constitute acceptance of the work or waive the City's right to raise issues regarding the work after payment.

The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Sec. 9. Cost Control. Opinions of probable construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by the Contractor hereunder shall be made on the basis of Contractor's experience and qualifications and represent Contractor's judgment as an experienced and qualified design professional. It is recognized, however, the Contractor does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or construction contractor's methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the report must of necessity be speculative until completion of its detailed design. Accordingly, Contractor does not guarantee that proposals, bids or actual costs shall not vary from opinions, evaluations or studies submitted by Contractor to City hereunder.

Sec. 10. Insurance. Contractor shall maintain insurance not less than the following:  
Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- contractual liability
- independent contractors, if any are to be used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Professional Liability, covering

- Architects and engineers (employed or engaged by Contractor) covering claims arising out design work and construction oversight, calculations and estimates, and any other professional architectural or engineering services performed in connection with this contract
- Self-insured retentions/deductibles in excess of \$250,000 must be approved by City Finance Director
- Coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- Combined single limit not less than \$2,000,000 per claim; aggregate limit not less than \$3,000,000 per year

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract); certificate must specifically state who is covered by the policy)
- employers' liability, any limits.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina

- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage below the specified minimum limits by endorsement
- certificates shall be addressed to:

City of Durham, North Carolina  
attention: Finance Director  
101 City Hall Plaza  
Durham, NC 27701

- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Sec. 11. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 12. Exhibits. The following exhibits are made a part of this contract:

Exhibit A Request for Proposals dated February 17, 2006 prepared by the City.

Exhibit B Proposal dated [Insert date of proposal] prepared by the Contractor.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Christina M. Sokol, P.E., CFM  
Department of Public Works  
Stormwater Services Division  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701  
The fax number is 919-560-4316.

To the Contractor:

Ronald A. Geiger, PE  
HDR Engineering, Inc.  
128 S Tryon Street  
Suite 1400  
Charlotte, North Carolina 28202-5004  
The fax number is 704-338-6760

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 15. Trade Secrets and Confidentiality. The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. The word "Proposer" used in that section shall mean the "Contractor."

Sec. 16. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges to the extent that they arise in any manner from, in connection with, or out of this contract as a result of alleged negligent acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) reasonable attorneys' fees assessed as part of any such item, and (2) amounts for violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or



appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 17. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO

provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Chapter 26 and not to the Contractor's alleged violations of other obligations.

(j) Prompt Payment to Subcontractors. Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City's Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is

not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(n) Americans with Disabilities Act (ADA) Provisions. The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact the office of Guillermo Rodriguez, RLA, ADA Coordinator, Voice: 919-560-4197 x237, TTY: 919-560-4809; guillermo.rodriguez@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

(o) Reuse of Plans/Specifications. The City shall not reuse plans or specifications created by Contractor as part of the Work for this Contract for other projects, without the written consent, and, if necessary, verification or adaptation by Contractor of such plans or specifications. The City shall pay any necessary verification, and/or adaptation at a rate mutually agreeable to the parties. The City shall indemnify Contractor from all claims and expenses resulting from the City's noncompliance with this paragraph. The restrictions contained within this paragraph do not apply to the use of plans or specifications in connection with the construction of the infrastructure for which these plans and/or specifications have been created, or for the modifications of or extensions to such infrastructure. In addition, these restrictions do not apply to drawings or documents that document existing conditions, including infrastructure, that are observed or located by Contractor as a part of the Work of this Contract. With regard to such descriptions of existing conditions, if the City reuses such information for any purpose, the City shall not represent that Contractor has documented such conditions for any purpose other than for this Contract.

(p) Hazardous Materials. CITY represents to CONTRACTOR that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, CITY represents that to the best of its knowledge it has disclosed to CONTRACTOR the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that CONTRACTOR's scope of services do not include services related in any way to hazardous materials. In the event CONTRACTOR or any other party encounters undisclosed hazardous materials, CONTRACTOR shall have the obligation to notify CITY and, to the extent required by law or regulation, the appropriate governmental officials, and CONTRACTOR may, at its option and without liability for delay, consequential or any other damages to CITY, suspend performance of services on that portion of the project affected by hazardous materials until CITY: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. CITY acknowledges that CONTRACTOR is performing professional services for CITY and that CONTRACTOR is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with CONTRACTOR's services under this Agreement. If CONTRACTOR's services hereunder cannot be performed because of the existence of hazardous materials, CONTRACTOR shall be entitled to terminate this Agreement for cause on 30 days written notice.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

D. Ann Gray City Clerk  
By: [Signature] City Manager  
CITY OF DURHAM

NORTH CAROLINA ACKNOWLEDGMENT BY CITY OF DURHAM  
COUNTY of Durham

I, a Notary Public in and for the aforesaid County and State certify that

D. Ann Gray personally appeared before me this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the 27 day of Sept 2006

My commission expires:

07-17-07

OFFICIAL SEAL  
Notary Public, North Carolina  
County of Durham  
Tonette Amos  
My Commission Expires 07/17/07

Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature] FINANCE OFFICER

9/20/06 DATE

ATTEST:

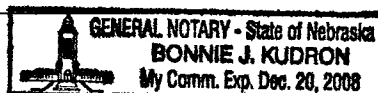
[Signature] Secretary  
By: Paul Cooke HDR Engineering, Inc. of the Carolinas

STATE OF Nebraska CORPORATION ACKNOWLEDGMENT  
COUNTY OF Douglas

I, Bonnie J. Kudron, a notary public in and for said county and state, certify that Louis J. Pachman personally appeared before me this day and acknowledged that he or she is \_\_\_\_\_ Secretary of HDR Engineering, Inc. of the Carolinas, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing contract with the City of Durham was signed in its name by its Sr. Vice President, whose name is Paul E. Cooke, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the 6th day of June, 2006

My commission expires:

12/20/08



Bonnie J. Kudron  
Notary Public